IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.554 OF 1993

1. Vishwa Bandhu Pearyelal Gupta
of Bombay, Indian Inhabitant,
residing at Abhishek No.7, 4
Bungalows, Off Linking road,
Andheri (West), Mumbai-400 058.

2. Santosh Vishwa Bandhu Gupta
of Bombay, Indian Inhabitant,
residing at Abhishek No.7, 4
Bungalows, Off Linking road,
Andheri (West), Mumbai-400 058. ..Petitioners.

V/s.

1. S.K. Laul

2. S.C. Tiwari

3. C.M. Begegiri

All being members of the
Appropriate Authority
constituted under Chapter XX-C
of the Income Tax Act, 1961 and
having their offices at Mittal
Court, 'A' Wing, 3rd Floor,
Nariman Point, Mumbai - 400 021.

4. Union of India

5. Lupin Laboratories Ltd., a
Company incorporated under the
provisions of the Companies Act,
1956 and having its registered
Office at 159, C.S.T. road,
Kalina, Santacruz (East),
Mumbai - 400 098.

6. Sapana Polyweave Pvt. Ltd.
(formerly known as Graphics
Packaging and Plastics Pvt. Ltd.,a
Company incorporated under the
provisions of the Companies Act,
1956 and having its registered
Office at 159, C.S.T. road,
Kalina, Santacruz (East),
Mumbai - 400 098. ..Respondents.

Mr.P.J.Pardiwala, Advocate for petitioners.

Mr.R.Ashokan for respondents.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED: 11TH SEPTEMBER, 2007.

ORAL JUDGMENT (PER J.P.DEVADHAR J.)

1. In this petition, the challenge is to the order dated 25th February, 1993 passed by the Appropriate Authority under section 269 UD(1) of the Income Tax Act, 1961 ('the Act' for short) whereby 'Abhishek Bungalow' situated at 4 Bungalows, Off Linking Road, Andheri (West), Mumbai - 400 058 ('property in question' for short) is sought to be purchased by the Appropriate Authority under Chapter XX-C of the Act.

2. The facts relevant for the purpose of the present petition are that by an agreement dated 5th October, 1989 the petitioners agreed to purchase from the respondent No.5 the property in question for a lumpsum price of Rs.45,00,000/- subject to the tenancy of respondent No.6. On an application made in form No.37-I the Appropriate Authority under the Act passed an order on 28th December, 1989 purporting to purchase the said property without giving any opportunity of

hearing to the petitioners.

3. Aggrieved by the said order, the petitioners filed a Writ Petition bearing No.93 of 1990. The said Writ Petition was allowed by this Court on 16th December, 1992 whereby the purchase order dated 28th December, 1989 was quashed and set aside and the matter was remanded with directions to reprocess the application of the petitioners in the light of the Judgment of the Supreme Court in **C.B.Gautam V/s. Union of India** reported in **199 I.T.R. 530**.

4. Thereafter by a show cause notice dated 1/1/1993 the petitioners were called upon to show cause as to why the property in question agreed to be purchased by the petitioners should not be purchased under 269UD (1) of the Act. In the said show cause notice, the Appropriate Authority relied upon four sale instances in the neighbouring JVPD and Juhu localities to establish that the property in question was undervalued by 15% of the fair market value.

5. The petitioners by their reply letter dated 22/1/1993 objected to the purchase of the property under section 269 UD(1) of the Act on various grounds set out therein. In the said reply, the petitioners inter alia stated that even on the basis of sale

instances set out in the impugned show cause, it cannot be said that there is undervaluation by 15% of the fair market value. By the said reply, the petitioners called upon the respondents to furnish particulars of the sale instances referred to in the show cause notice. The petitioners also relied upon a sale instance in the same Society wherein similar property has been sold for a lesser price and the sale of that flat has been approved by the Appropriate Authority under Chapter XX-C of the Act. Accordingly, it was submitted that there was no undervaluation and the show cause notice be dropped.

6. By the impugned order dated 25th February, 1993 the Appropriate Authority purported to purchase the property in question. Challenging the said order, the present petition is filed. During the pendency of the Writ Petition, in view of the stay granted by this Court, no further action has been taken to implement the impugned order dated 25th February, 1993.

7. Mr.Pardiwala, learned counsel appearing on behalf of the petitioners submitted that the impugned order dated 25th February, 1993 suffers from serious infirmities and is liable to be quashed and set aside, because, firstly, the appropriate authority has not determined the fair market value of the property in

question so as to arrive at a conclusion that there is any undervaluation to the extent of 15% of the fair market value. Secondly, it is contended that the impugned order passed without furnishing particulars relating to the sale instances set out in the show cause notice, is in breach of the principles of natural justice. Thirdly, it is contended that even if the average sale prices of the sale instances set out in the show cause notice are taken as the fair market value, there is no undervaluation to the extent of 15% as enunciated by the Apex Court in the case of C.B. Gautam. Fourthly, some of the similar properties situated in the same locality which were purchased by the appropriate authority were put to auction during the relevant period at a price less than the price of the petitioners, but the same could not be sold, which clearly shows that there was no undervaluation of the property in question. Lastly, Mr.Pardiwala submitted that the sale instances pointed out by the petitioners has not been considered by the Appropriate Authority. For all the aforesaid reasons, Mr.Pardiwala submitted that the impugned order is liable to be quashed and set aside.

8. Mr.Ashokan, learned counsel appearing on behalf of the revenue submitted that prior to the decision of this Court in the case of **Vimal Agarwal**

V/s. A.A. & Others reported in **210 ITR 16**, there was no practice of determining the fair market value. Mr.Ashokan further submitted that the objections raised by the petitioners have in fact been considered in the impugned order and, therefore, no fault can be found with the said order. Accordingly, Mr.Ashokan submitted that there is no merit in the petition and the same is liable to be dismissed.

9. We have carefully considered the rival submissions. The Apex Court in the case of C.B.Gautam (supra) has held that the provisions of Chapter XX-C can be resorted to only when there is a significant undervaluation to the extent of 15% of the fair market value with a view to evade tax. As held by this Court in the case of Vimal Agarwal (supra) it is necessary to first determine the fair market value of the property in question in the light of the attending circumstances. This Court has further held that without determining the fair market value, it is not only difficult but impossible to say that the apparent consideration is lower than the fair market value by 15%. In the present case, admittedly, the fair market value of the property in question is not determined and, therefore, purchase of the property in question on the footing that there is undervaluation to the extent of 15% of the fair market value has to be held to be

without any basis.

10. It is pertinent to note that the property in question is situated at Versova whereas the sale instances relied upon in the impugned order are situated at Juhu. According to the petitioners, the distance between Versova and Juhu is about 2 to 3 Kms. and there is vast difference between the valuation of the property situated in these two localities. This is evident from the fact that even the State Government for the purposes of stamp duty has fixed higher rate in respect of the premises situated at Juhu compared to the rate in respect of the premises situated at Versova. This disparity in the location has not been considered in the impugned order in spite of specific objections was raised by the petitioners in that behalf.

11. Moreover, before passing the impugned order, the appropriate authority has neither given the documents relating to the sale instances referred to in the show cause notice nor in the impugned order, the appropriate authority has referred to the sale instance pointed by the petitioners in their reply to the show cause notice. In these circumstances, the grievance of the petitioners that the impugned order suffers from serious infirmities deserves acceptance.

12. It is pertinent to note that the appropriate authority purported to sell some of the properties situated in the same locality which were purchased by them under section 269 UD(1) of the Act at the price lesser than the price agreed to by the petitioners and in spite of the best attempt the appropriate authority could not sell those properties. This fact is neither denied in the affidavit in reply nor dealt with in the impugned order. Thus, it cannot be said that the sale consideration in respect of the property in question is undervalued.

13. For all the aforesaid reasons, we are of the opinion, that the impugned order cannot be sustained.

14. Accordingly, the petition is allowed. Rule is made absolute, however, with no order as to costs.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)